

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 496 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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BHOGILAL SOMABHAI PATEL

Versus

ATUL VISUBHAI PATEL

Appearance:

MR PB MAJMUDAR for Petitioner

MR S TRIPATHY for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/02/99

ORAL JUDGEMENT

Rule. Mr Tripathy, learned counsel for the respondents waives service of Rule. With the consent of the learned counsel for the parties, the matter is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the interim order dated 11.1.1999 passed by the Gujarat Revenue Tribunal rejecting the petitioner's application for interim relief in revision application No. TEN.B.A. 465/98 filed under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948

(hereinafter referred to as "the Act").

3. In Tenancy Case No. 6316/91 the Mamlatdar & ALT, Baroda rendered his decision dated 27.3.1996 holding that the petitioner was a tenant of the land in question admeasuring 3 Acres and 34 Gunthas in Survey No. 26 of village Ankodia. The respondents herein challenged the said order in Tenancy Appeal No. 43 of 1996 and the Assistant Collector, Baroda allowed the appeal and set aside the aforesaid order of the Mamlatdar & ALT. Aggrieved by the said order of the Assistant Collector, the petitioner has preferred the above numbered revision application before the Tribunal. The petitioner also filed an application for interim stay contending that the petitioner is in possession of the land in question as the possession of the land was given to the petitioner for the purpose of cultivation even after the sale of the land by the petitioner and his brothers to the respondents.

4. During pendency of this petition, this Court passed the order dated 22.1.1999 appointing a Court Commissioner to personally go to the land in question and to submit his report as to whether there are any standing crops on the land in question and if yes, what are the crops. The Commissioner was also to report any other aspect of the matter which may be considered to be relevant by him in order to show that if the crops are cultivated, they are cultivated by whom and to show as to who is in possession of any super structure on the land in question.

The aforesaid order was passed in view of two rival versions being pleaded before the Court on 22.1.1999. According to the petitioner, there were standing crops on the land in question and that he had sown brinjal crops. On the other hand, it was the categorical assertion of the respondents that there were no crops whatsoever.

5. The Court Commissioner has visited the site on 24.1.1999 and submitted his report on 27.1.1999. It appears from the report of the Court Commissioner that the crops sown on the land in question were removed and at the last hearing the Court Commissioner was also asked and he had stated that it could be seen that the brinjal crops were recently removed. A perusal of the said report prima facie shows that the petitioner is in possession of the land in question and, therefore, when there was an order of the Mamlatdar & ALT in favour of the petitioner and his revision application, challenging

the order of the Assistant Collector (setting aside the order of the Mamlatdar) is pending before the Tribunal, it would be in the fitness of things that pending the revision application before the Tribunal, possession of the petitioner is protected.

It may also be mentioned here that as stated in the Panchnama dated 20.1.1992 in Regular Civil Suit No. 71/92 the Court Commissioner appointed by the Civil Court had found that the possession of the land in question was with the petitioner-Bhogilal Somabhai Patel, who was the plaintiff in that suit.

6. Mr Tripathy, learned counsel for the respondents, however, submitted that in view of the order dated 20.4.1993 the Civil Court, Baroda had restrained the present petitioner from dispossessing the defendants in the suit i.e. the respondent herein, the petitioner cannot claim to be in possession of the land in question. It is further submitted that two other brothers of the petitioner had also filed previous proceedings and the same were either withdrawn or dismissed and, therefore, no interim injunction should be granted in favour of the present petitioner.

7. The submissions made by Mr Tripathy may certainly require consideration at the time of final hearing of the revision application, but since the land in question is an agricultural land and since the petitioner is prima facie found to be in possession of the land, the interests of justice require that the petitioner's possession should be protected till disposal of the revision application by the Tribunal, because the Mamlatdar & ALT did find that the petitioner was a tenant of the land in question which finding was of course reversed by the Deputy Collector but the matter is still at large before the Tribunal.

8. It may be clarified that this Court has not expressed any opinion on the merits of the controversy between the parties and the present order is passed for the limited purpose of directing the parties to maintain status quo and it is for this limited purpose that when the petitioner is prima facie found to be in possession of the land, the interim order to that effect is required to be passed. It goes without saying that when the Tribunal hears the revision application finally, the same shall be decided on merits and in accordance with law without being influenced by any observations made in this order which are limited for the interlocutory stage.

9. The petition is accordingly allowed. Rule is made absolute the aforesaid extent with no order as to costs.

10. At this stage, the learned counsel for the respondents prays for stay of operation of this order for some time in order to enable the respondents to have further recourse in accordance with law.

In the facts and circumstances of the case, the operation of this order is stayed till 3.3.1999 on condition that the parties to this petition shall maintain status quo regarding possession of the land in question and subject to the further condition that no party in the proceedings shall transfer their interest on the land in question in any manner nor shall they part with possession thereof in favour of any third party.

February 16, 1999 (M.S. Shah, J.)

sundar/-